

OCT 24 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

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1		MUR:	6022
2		DATE COMPLAINT FILED:	June 4, 2008
3		DATE OF NOTIFICATION:	June 11, 2008
4		DATE OF LAST RESPONSE:	July 25, 2008
5		DATE ACTIVATED:	July 29, 2008
6			
7		EXPIRATION OF STATUTE	May 2013
8		OF LIMITATIONS:	
9	COMPLAINANT:	Leslie Byrne for Congress	
10			
11	RESPONDENTS:	Science Engineering, Inc. (d/b/a Science	
12		Applications International Corporation)	
13		Robert A. Rosenberg	
14		Gerald E. Connolly	
15		Gerry Connolly for Congress and John Iennison,	
16		in his official capacity as Treasurer	
17			
18	RELEVANT STATUTES AND	2 U.S.C. § 441b(a)	
19	REGULATIONS:	2 U.S.C. § 441b(b)	
20		2 U.S.C. § 441c	
21		11 C.F.R. § 110.11	
22		11 C.F.R. § 114.1	
23		11 C.F.R. § 114.2	
24		11 C.F.R. § 114.3	
25		11 C.F.R. § 114.4	
26		11 C.F.R. § 114.5	
27			
28	INTERNAL RECORDS	Disclosure Reports	
29	CHECKED:		
30			
31	FEDERAL AGENCIES	None	
32	CHECKED:		
33			

I. INTRODUCTION

This case involves allegations that Science Engineering, Inc. (d/b/a Science Applications International Corporation) ("SAIC") violated the Federal Election Campaign Act of 1971, as amended, ("the Act" and "FECA") by allowing a former corporate officer, Robert A. Rosenberg, to solicit SAIC employees via company e-mail to contribute to or otherwise support Gerry Connolly for Congress and John Jennison, in his official capacity as Treasurer, (the "Connolly Committee"); and that the Connolly Committee violated the Act by accepting prohibited contributions from SAIC. See 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f).

SAIC's response establishes that Rosenberg's e-mail solicitations were limited to the "restricted class" of employees – defined by 11 C.F.R. § 114.1(j) as "stockholders and executive or administrative personnel" – and that such partisan political communications were otherwise made in accordance with the FECA. See 11 C.F.R. § 114.3. Further, there is nothing to suggest that SAIC either coerced its restricted class employees to contribute to the Connolly Committee, or facilitated the collection of contributions. Finally, although there is no actual evidence of coordination in this matter, it would have been permissible for SAIC to coordinate solicitations that were limited to its restricted class with the Connolly Committee. Accordingly, we recommend the Commission find no reason to believe that Respondents violated the Act.¹

¹ SAIC also asks the Commission to award respondents attorney's fees in its Response. The FECA provides no mechanism for awarding attorney's fees in cases where the complaint is dismissed. Accordingly, we have made no recommendation regarding attorney's fees.

II. FACTUAL BACKGROUND

SAIC is a Fortune 500 scientific, engineering and technology applications company that frequently acts as a contractor for the U.S. Government. The SAIC Inc. Voluntary Political Action Committee ("VPAC") is the company's separate segregated fund. Robert A. Rosenberg is a part-time employee of SAIC who is classified as an "Unscheduled Professional" or consultant. From 1998-2003, Rosenberg held various management positions at SAIC, including Executive Vice President and General Manager for the National Capitol Region, but resigned from his management position for health reasons in October 2003.

A. Rosenberg Solicitations

In March 2008, Rosenberg contacted SAIC management and inquired as to legally permissible means for him to communicate with SAIC employees about supporting the candidacy of another SAIC employee, Gerald E. Connolly, who was seeking the Democratic nomination for Virginia's 11th Congressional District. See SAIC Response at 4. After consulting with counsel, SAIC decided that it would be permissible for Rosenberg to send an e-mail in support of Mr. Connolly's campaign provided the e-mail was sent only to those employees who were part of its exempt "restricted class" to which SAIC could send partisan political communications. *Id.*

SAIC's separate segregated fund, VPAC, maintains an online database of individuals who are in SAIC's "restricted class." *Id.* at 4-5; see also Declaration of Amy Childers ("Childers Decl."), attached to SAIC Response, at ¶ 3. This database is populated through regularly-scheduled, automated downloads using an SAIC Human

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Resources management software application called VOCUS, which is updated monthly, including during the week of April 21, 2008. Childers Decl. at ¶ 4.

On or about May 1, 2008, SAIC Assistant Vice President and Director for Policy and Political Programs Amy S. Childers, whose duties include administering VPAC, provided Rosenberg with an e-mail distribution list of 250 SAIC "restricted class" employees, which included: (1) names of SAIC managers who hold the rank of Senior Vice President or higher, and (2) those who hold the rank of Vice President or higher and also live or work in the Commonwealth of Virginia, State of Maryland or District of Columbia. Childers Decl. at ¶ 6. Childers also sent Rosenberg draft language for the solicitation, which Rosenberg edited before sending his solicitation via e-mail to the "restricted class" distribution list provided by SAIC on May 1, 2008. Declaration of Robert A. Rosenberg ("Rosenberg Decl."), attached to SAIC Response, at ¶ 5. Rosenberg did not send the e-mail to anyone outside of those on the distribution list provided by Childers. *Id.*

On May 14, 2008, Childers sent Rosenberg a second distribution list of an additional 137 SAIC "restricted class" employees who hold the corporate title of Assistant Vice President and who live or work in Virginia's 11th Congressional District. Childers Decl. at ¶ 7. Rosenberg sent a solicitation e-mail, which was virtually identical to his May 1st solicitation, to the second "restricted class" distribution list on May 14, 2008. Rosenberg Decl. at ¶ 6. Rosenberg did not send the e-mail to anyone outside of those on the distribution list provided by Childers. *Id.*

Both of Rosenberg's e-mails invited the "restricted class" recipients to attend a May 21, 2008 fundraiser being held by the Professional Services Council ("PSC"), a

1 national trade association for the government professional and technical services industry,
2 in support of the Connolly Committee. See May 1 and May 14 e-mails attached to
3 Rosenberg Decl., at Attachments 1 and 2. Both e-mail solicitations were sent to
4 "restricted class" recipients as "blind carbon copies" which did not reveal the names of
5 other recipients, except for two visible "carbon copies" to Childers and SAIC Senior Vice
6 President for Government Affairs Jay Killeen. *Id.* The e-mails noted the "suggested
7 contribution" of \$250 for the event. *Id.* The solicitations do not indicate that SAIC is in
8 any way associated with the event or will be involved in collecting or otherwise
9 monitoring contributions to the Connolly Committee. Nor do the solicitations indicate on
10 their face that they were directed at or received by anyone outside of SAIC's restricted
11 class.

12 Disclosure reports indicate that the Connolly Committee received \$2,700 from
13 SAIC personnel on the day of the PSC fundraiser and \$1,950 in the months thereafter.
14 Disclosure reports also indicate that the Connolly Committee had received \$3,000 from
15 SAIC personnel in the months preceding the PSC fundraiser solicitation. As of the date
16 of this Report, all of the contributions the Connolly Committee has received from SAIC
17 personnel total \$7,650.

18 **B. Connolly Committee Contacts with SAIC**

19 The Complaint cites a Washington Post.com article describing the e-mail
20 solicitations, which states, "Connolly said he had nothing to do with the solicitation
21 though he knew Rosenberg was planning it. 'I was aware of the fact that he was going to
22 organize something for some SAIC employees who wanted to be supportive,' Connolly
23 said." Complaint, Exhibit 2. The Complaint alleges that this is evidence that the

1 Connolly Committee knowingly accepted contributions from SAIC employees that were
2 the result of solicitations prohibited by Section 441b(a).

3 Connolly has been an employee of SAIC for six years and currently serves as
4 Director of Community Relations in McLean, Virginia. The Connolly Committee's
5 Response states that Connolly was only tangentially aware that Rosenberg, a fellow
6 SAIC employee, was planning to elicit the support of other SAIC employees for the
7 Connolly Committee. Connolly Committee Response at 3. Specifically, the Connolly
8 Committee asserts that Connolly and Rosenberg had a single conversation soon after he
9 announced his intention to run for Congress in which Rosenberg vaguely mentioned that
10 he wanted to "organize something to support his campaign," and that neither Connolly
11 nor the Connolly Committee knew about the solicitations until Connolly, as a member of
12 SAIC's "restricted class," received a copy of the e-mail solicitation from Rosenberg on
13 May 14, 2008. *Id.*

14 **III. LEGAL ANALYSIS**

15 The Act prohibits corporations from making contributions or expenditures in
16 connection with any election for Federal office. 2 U.S.C. § 441b(a). Similarly, the Act
17 prohibits government contractors from either making or soliciting contributions to
18 political parties, committees or candidates for public office. 2 U.S.C. § 441c. These
19 provisions also generally prohibit corporate/contractor officials from facilitating the
20 making of contributions by ordering or directing subordinates or support staff to plan,
21 organize or carry out a fundraising project as part of their work responsibilities using
22 corporate resources, unless the corporation receives advance payment for the fair market
23 value of such services. 11 C.F.R. § 114.2(f)(2).

1 Communications, including solicitations on behalf of federal candidates, to a
2 corporation's "restricted class" are an exception to the general prohibition against
3 corporate/contractor facilitation of contributions. See 11 C.F.R. § 114.3. A corporation
4 and its officers may make partisan communications to its stockholders and executive or
5 administrative personnel and their families. 2 U.S.C. § 441b(b)(2)(A). As long as these
6 communications are aimed at this "restricted class," and the corporation does not
7 otherwise use corporate resources to facilitate the contributions by means such as
8 coercing employees to contribute, or by collecting and forwarding the contributions, such
9 communications are not a violation of the FECA. See 11 C.F.R. § 114.2(f)(1).

10 Here, the Complaint alleges that the e-mail solicitation sent by Rosenberg violated
11 the Act because it may have been sent to SAIC employees outside of the restricted class
12 to which such solicitations are allowed. The Complaint alleges that the use of the "blind
13 carbon copy" for the recipients prevented complainants from identifying all of the
14 recipients, which leaves open the possibility that someone outside of the restricted class
15 received the solicitation. The SAIC Respondents expressly deny this allegation and
16 provided sworn declarations by Childers and Rosenberg attesting that the e-mail
17 distribution lists sent to Rosenberg were limited to the company's restricted class. The
18 sworn statement submitted by Childers emphasizes that she used the VOCUS software to
19 ensure that the distribution list only included "restricted class" employees, Childers Decl.
20 at ¶¶ 3-4, 6-7, and Rosenberg attests that he did not send the solicitation to anyone
21 outside of the distribution lists provided by Childers. Rosenberg Decl. at ¶¶ 5-6. We
22 have no information that would cast doubt upon the veracity of these statements.

1 The Complaint also alleges that the Rosenberg solicitation e-mail was coercive
2 because it came from a former SAIC manager, who still maintains power and authority at
3 SAIC, and because the e-mail did not include a disclaimer informing the recipients that
4 they were free to disregard the solicitation without fear of reprisal. The Complaint again
5 points to the fact that Rosenberg blind copied the e-mail's recipients, and notes that
6 complainants allegedly received a copy of the e-mail anonymously, as evidence that
7 "non-restricted" SAIC employees might have received the e-mail and been intimidated or
8 feared reprisal if they voiced objections. Complaint at 3.

9 As discussed above, Rosenberg declares that he only sent the solicitation e-mail to
10 individuals on the distribution list provided by Childers, which Childers attests included
11 only "restricted class" members. SAIC Respondents also aver that Rosenberg is not a
12 corporate officer or agent of SAIC, but a part-time, "unscheduled professional" with no
13 subordinates or supervisory responsibilities and no management authority whatsoever,
14 who does not exercise control or influence over decisions related to the hiring,
15 compensation, promotion or termination of any SAIC personnel, including the
16 individuals to whom he sent the e-mail. SAIC Response at 4. Moreover, the e-mail did
17 not indicate that the company would collect, monitor or track contributions or other
18 efforts made by SAIC employees in support of the Connolly Campaign.² Although a
19 solicitation for the company's separate segregated fund requires disclaimer language
20 making it clear that the employee has a right to refuse to contribute without any reprisal,

² The Commission has found evidence of coercion where companies have made employee contributions to a candidate mandatory or kept track of which employees did and did not contribute. *See, e.g.*, MUR 5379 (Penelas) (finding reason to believe Section 441b had been violated and entering into conciliation with Respondents to settle violations, where company Vice President and Chief Operating Officer issued a solicitation e-mail directing all employees to "pull out your checkbooks" because employees were "expected" to financially support the candidate up to the statutory maximum, and appointed a designated employee to track and report all employee contributions).

1 there is no such requirement for solicitations to the "restricted class" on behalf of political
2 committees other than the connected organization's separate segregated fund. 2 U.S.C.
3 § 441b(b)(2)(A), 11 C.F.R. § 110.11(f)(2).

4 Based on the available information, we recommend the Commission find there is
5 no reason to believe that Science Engineering, Inc. (d/b/a Science Applications
6 International Corporation) and Robert A. Rosenberg violated 2 U.S.C. § 441b(a).

7 The Complaint also alleges that the Connolly Committee knowingly accepted
8 prohibited contributions from SAIC and its employees. See 2 U.S.C. § 441b(a), 11
9 C.F.R. § 114.2(d). Although there is no information upon which to conclude that the
10 solicitation was coordinated with the Connolly Committee, the limitation of the
11 solicitation to members of SAIC's restricted class would make such coordination
12 permissible. 11 C.F.R. § 114.3(a)(1). In discussing revisions to 11 C.F.R. § 114.3, the
13 Commission noted that communications directed solely to the restricted class may be
14 coordinated with candidates and political committees without transforming such exempt
15 restricted class communication into an in-kind contribution. 60 Fed. Reg. 64260, 64265
16 (Dec. 14, 1995). Accordingly, there is no basis on which to conclude that SAIC made,
17 or the Connolly Committee accepted, prohibited in-kind contributions. 2 U.S.C. §
18 441b(a).

19 Based on the available information, we recommend that the Commission find no
20 reason to believe that Gerald E. Connolly and Gerry Connolly for Congress and John
21 Jennison, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a).

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IV. RECOMMENDATIONS

1. Find no reason to believe that Science Engineering, Inc. (d/b/a Science Applications International Corporation) violated 2 U.S.C. § 441b(a) by soliciting or making prohibited contributions;
2. Find no reason to believe that Robert A. Rosenberg violated 2 U.S.C. § 441b(a) by soliciting contributions from prohibited sources;
3. Find no reason to believe that Gerald E. Connolly and Gerry Connolly for Congress and John Jennison, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a) by knowingly accepting or receiving prohibited contributions;
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and
6. Close the file.

Thomasenia P. Duncan
General Counsel

October 24, 2008
Date

BY:

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